

§ 140.501

funds on which the deductions occurred.

Subpart D—[Reserved]

Subpart E—Administrative Settlement Costs—Contract Claims

SOURCE: 44 FR 59233, Oct. 15, 1979, unless otherwise noted.

§ 140.501 Purpose.

This regulation establishes the criteria for eligibility for reimbursement of administrative settlement costs in defense of contract claims on projects performed by a State under Federal-aid procedures.

§ 140.503 Definition.

Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of a contracting officer or his/her authorized representative, attorneys, and/or members of State boards of arbitration, appeals boards, or similar tribunals, which are allocable to the findings and determinations of contract claims, but not including administrative or overhead costs.

§ 140.505 Reimbursable costs.

(a) Federal funds may participate in administrative settlement costs which are:

- (1) Incurred after notice of claim,
- (2) Properly supported,
- (3) Directly allocable to a specific Federal-aid or Federal project,
- (4) For employment of special counsel for review and defense of contract claims, when
 - (i) Recommended by the State Attorney General or State Highway Agency (SHA) legal counsel and
 - (ii) Approved in advance by the FHWA Division Administrator, with advice of FHWA Regional Counsel, and
- (5) For travel and transportation expenses, if in accord with established policy and practices.

(b) No reimbursement shall be made if it is determined by FHWA that there was negligence or wrongdoing of any kind by SHA officials with respect to the claim.

23 CFR Ch. I (4–1–98 Edition)

Subpart F—Reimbursement for Bond Issue Projects

SOURCE: 48 FR 54971, Dec. 8, 1983, unless otherwise noted.

§ 140.601 Purpose.

To prescribe policies and procedures for the use of Federal funds by State highway agencies (SHAs) to aid in the retirement of the principal and interest of bonds, pursuant to 23 U.S.C. 122 and the payment of interest on bonds of eligible Interstate projects.

§ 140.602 Requirements and conditions.

(a) An SHA that uses the proceeds of bonds issued by the State, a county, city or other political subdivision of the State, for the construction of projects on the Federal-aid primary or Interstate system, or extensions of any of the Federal-aid highway systems in urban areas, or for substitute highway projects approved under 23 U.S.C. 103(e)(4), may claim payment of any portion of such sums apportioned to it for expenditures on such system to aid in the retirement of the principal of bonds at their maturities, to the extent that the proceeds of bonds have actually been expended in the construction of projects.

(b) Any interest earned and payable on bonds, the proceeds of which were expended on Interstate projects after November 6, 1978, is an eligible cost of construction. The amount of interest eligible for participation will be based on (1) the date the proceeds were expended on the project, (2) amount expended, and (3) the date of conversion to a regularly funded project. As provided for in section 115(c), Pub. L. 95-599, November 6, 1978, interest on bonds issued in any fiscal year by a State after November 6, 1978, may be paid under the authority of 23 U.S.C. 122 only if such SHA was eligible to obligate Interstate Discretionary funds under the provisions of 23 U.S.C. 118(b) during such fiscal year, and the Administrator certifies that such eligible SHA has utilized, or will utilize to the fullest extent possible during such fiscal year, its authority to obligate funds under 23 U.S.C. 118(b).

(c) The Federal share payable at the time of conversion, as provided for in § 140.610 shall be the legal pro rata in effect at the time of execution of the project agreement for the bond issue project.

(d) The authorization of a bond issue project does not constitute a commitment of Federal funds until the project is converted to a regular Federal-aid project as provided for in § 140.610.

(e) Reimbursements for the redemption of bonds may not precede, by more than 60 days, the scheduled date of the retirement of the bonds.

(f) Federal funds are not eligible for payment into sinking funds created and maintained for the subsequent retirement of bonds.

§ 140.603 Programs.

Programs covering projects to be financed from the proceeds of bonds shall be prepared and submitted to FHWA. Project designations shall be the same as for regular Federal-aid projects except that the prefix letter "B" for bond issue shall be used as the first letter of each project designation, e.g., "BI" for Bond Issue Projects—Interstate.

§ 140.604 Reimbursable schedule.

Projects to be financed from other than Interstate funds shall be subject to a 36-month reimbursable schedule upon conversion to regular Federal-aid financing (See appendix). FHWA will consider requests for waiver of this provision at the time of conversion action. Waivers are subject to the availability of liquidating cash.

§ 140.605 Approval actions.

(a) Authorization to proceed with preliminary engineering and acquisition of rights-of-way shall be issued in the same manner as for regularly financed Federal-aid projects.

(b) Authorization of physical construction shall be given in the same manner as for regularly financed Federal-aid projects. The total cost and Federal funds required, including interest, shall be indicated in the plans, specifications, and estimates.

(c) Projects subject to the reimbursable schedule shall be identified as an "E" project when the SHA is author-

ized to proceed with all or any phase of the work.

(d) Concurrence in the award of contracts shall be given.

§ 140.606 Project agreements.

Project Agreements, Form PR-2, shall be prepared and executed. Agreement provision 8 on the reverse side of Form PR-2¹ shall apply for bond issue projects.

§ 140.607 Construction.

Construction shall be supervised by the SHA in the same manner as for regularly financed Federal-aid projects. The FHWA will make construction inspections and reports.

§ 140.608 Reimbursable bond interest costs of Interstate projects.

(a) Bond interest earned on bonds actually retired may be reimbursed on the Federal pro rata basis applicable to such projects in accordance with § 140.602(b) and (c).

(b) No interest will be reimbursed for bonds issued after November 6, 1978, used to retire or otherwise refinance bonds issued prior to that date.

§ 140.609 Progress and final vouchers.

(a) Progress vouchers may be submitted for the Federal share of bonds retired or about to be retired, including eligible interest on Interstate Bond Issue Projects, the proceeds of which have actually been expended for the construction of the project.

(b) Upon completion of a bond issue project, a final voucher shall be submitted by the SHA. After final review, the SHA will be advised as to the total cost and Federal fund participation for the project.

§ 140.610 Conversion from bond issue to funded project status.

(a) At such time as the SHA elects to apply available apportioned Federal-aid funds to the retirement of bonds, including eligible interest earned and payable on Interstate Bond Projects, subject to available obligational authority, its claim shall be supported by appropriate certifications as follows:

¹The text of FHWA Form PR-2 is found in 23 CFR part 630, subpart C, appendix A.